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IN THE COURT OF APPEALS  
FOR THE STATE OF ALASKA

Alaska Dental Arts, LLC

Appellant,

vs.

THE SUPERIOR COURT OF THE  
STATE OF ALASKA, *et al.*,

Appellee.

App. Ct. No. A-13816

Trial Ct. Case No. 3AN-17-02990CR  
3AN-17-02992CR

**AK DENTAL ARTS'S REPLY TO SETH LOOKHART'S RESPONSE TO  
ORIGINAL APPLICATION**

Appellant Alaska Dental Arts, LLC, ("ADA") through counsel, hereby submits its Reply to Seth Lookhart's Response to Original Application upon invitation of this Court. Lookhart filed a Response to ADA's Original Application ("Application") requesting a stay of consideration of ADA's Original Application because Lookhart believes (1) the Application is not yet ripe, and (2) the trial court lacked the authority to dispose of the frozen

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1 funds at issue in the Application. Lookhart is incorrect on both counts for the reasons that  
2 follow.

3 **I. ARGUMENT**

4 **a. ADA's Application is Ripe for Review.**

5 It is clear that ADA's Application is ripe for judicial review. The doctrine of ripeness  
6 requires a plaintiff to claim that either a legal injury has been suffered or one will be suffered  
7 in the future.<sup>1</sup> There is "no set formula that can identify whether a case is or is not ripe for  
8 decision. Instead, a number of factors must be considered."<sup>2</sup> The "central concern of ripeness  
9 'is whether the case involves uncertain or contingent future events that may not occur as  
10 anticipated, or indeed may not occur at all.'"<sup>3</sup> The trial court in this matter issued an order  
11 directing the release of the frozen funds at issue to the State of Alaska Department of Health  
12 and Social Services("DHSS"). [Appx. at 268]. Lookhart argues that his pending motion to  
13 stay the trial court's order releasing the frozen funds and his appeal of his convictions and  
14 sentence demonstrate that this matter is not ripe for review. [Lookhart Resp. at 14].

15  
16  
17 However, it is clear that the trial court's order disposition of the frozen funds is not  
18 an uncertain or contingent future event that may not occur as anticipated or at all. The trial  
19 court's order took effect and has not been stayed, as Lookhart's Response notes. [Lookhart  
20  
21

22 <sup>1</sup>See *Bowers Office Prods., Inc. v. University of Alaska*, 755 P.2d 1095, 1096 (Alaska 1988).

23 <sup>2</sup>*Brause v. State, Department of Health & Social Services*, 21 P.3d 357, 359 (Alaska 2001).

24 <sup>3</sup> *Id.* (quoting 3A Charles Alan Wright, et al., *Federal Practice and Procedure* § 3532, at 112 (2d ed.1984).

Resp. at 13]. The trial court exercised its authority over the frozen funds. The mere possibility that Lookhart's restitution obligation could change if he successfully challenges his convictions on appeal does not satisfy his burden of showing a likelihood of success on the merits. *See* Appellate Rule 205 (regarding stays of judicial action pending appeal in a civil matter); Appellate Rule 206(a) (regarding stay of execution pending appeal in a criminal matter). Lookhart has not set forth facts nor evidence sufficient to stay resolution of an issue which is ripe for review.

Moreover, even if Lookhart has moved the trial court to stay the order, the trial court's order remains in effect until Lookhart's motion is granted, and as such, the trial court's order remains ripe for review. Much like Lookhart's argument concerning the reversal of his convictions, Lookhart confuses contingent outcomes regarding his convictions with the concrete outcomes which have occurred—namely, that the trial court has issued an order disposing of the frozen funds. The trial court's order is ripe for review because it has full force and effect, and it is not unripe because a potential scenario exists where the order could be invalidated on appeal.

**b. The Trial Court's Authority for its Order is Not at Issue.**

Lookhart claims that the trial court lacked the authority to issue its order disposing of the frozen funds, but the trial court's authority is not at issue in this Application by ADA. ADA applied for relief concerning the trial court's disposition of the frozen funds; ADA did not challenge the trial court's authority to dispose of the funds in the first place. *See* ADA's



Points on Appeal, already on file with this Court. If Lookhart desires to challenge the trial court's authority to dispose of his alleged property, Lookhart must appeal the trial court's order and consolidate the issue with the appeal of his conviction and sentence, or he must seek another avenue of relief than ADA's Application. Notably, Lookhart does not point to any evidence that he argued the trial court lacked the authority to dispose of the frozen funds. Lookhart was even notified of oral argument regarding disposition of the frozen funds and elected not to participate. [Appx. at 243]. Lookhart has not articulated why he should be permitted to raise an argument in a Response to an appeal which he did not raise at the trial court level. Finally, even if Lookhart were to obtain the stay that he requests in his Response, his requested relief would merely stay ADA's Application, not the order which disposed of the frozen funds in the first place.

## II. CONCLUSION

For the reasons stated above, ADA's original application is ripe for review, and should not be stayed pending resolution of Lookhart's direct appeal as he requests in his Response.

DATED at Fairbanks, Alaska, this 17<sup>th</sup> day of September, 2021.

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